

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

|                                       |   |                             |
|---------------------------------------|---|-----------------------------|
| In the matter of the adoption of New  | ) | NOTICE OF PUBLIC HEARING ON |
| Rules I through IV, the amendment of  | ) | PROPOSED ADOPTION,          |
| ARM 42.13.902 and 42.13.904, and      | ) | AMENDMENT, AND REPEAL       |
| the repeal of ARM 42.13.903           | ) |                             |
| pertaining to the Responsible Alcohol | ) |                             |
| Sales and Service Act server training | ) |                             |
| programs                              | ) |                             |

TO: All Concerned Persons

1. On July 9, 2015, at 11 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on June 26, 2015. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

3. The department is proposing the rule actions in this notice to provide clear guidance to state trainers and private training providers on the trainer application process and training instruction requirements. Since the adoption of the server training rules following passage of the Responsible Alcohol Sales and Service Act in 2011, the department has worked with trainers to ensure the quality of trainers and the effectiveness of training programs. Updating the rules to reflect information the department has been providing to trainers will help ensure consistency in the administration of training programs.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to this subchapter:

- (1) "Acceptable forms of identification" include:
  - (a) state driver license or identification card;
  - (b) Canadian driver license or identification card;
  - (c) passport;
  - (d) tribal identification card; and
  - (e) any form of government issued identification.

(2) "Combined exam score" means the overall score of an exam administered by a private training provider where the Montana portion of the exam is weighted as 50 percent of the overall exam score.

(3) "House policies" means a company policy that dictates how a certain situation, activity, or process should be handled.

(4) "Incident log" means a document that tracks situations occurring on the licensed premises.

(5) "Private training provider" means a private business that provides responsible alcohol sales and service training using a program that is approved by the department.

(6) "Proof of training document" means a document stating the program name, training date, participant's name, and participant's date of birth, that is issued to a participant who obtained a score of 80 percent or more on the exam.

(7) "State trainer" means an individual that is approved by the department to provide responsible alcohol sales and service training using the department's curriculum.

(8) "Training records" means records submitted to the department by a private training provider that include the program name, training date, whether training was online or in person, and each participant's name, date of birth, and combined exam score.

AUTH: 16-4-1009, MCA

IMP: 16-4-1006, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule I to add definitions of terms used and/or proposed to be used in subchapter 9. Definitions are necessary to add clarity and provide more detailed information for the industry and public regarding the subject matter covered in the rules.

NEW RULE II STATE TRAINER APPLICATION PROCESS (1) The department, in its sole discretion, may approve an application for an individual to be a state trainer.

(2) To apply to be a state trainer, an applicant must:

(a) possess a minimum of one year combined experience in:

(i) law enforcement;

(ii) communications;

(iii) public relations;

(iv) healthcare; or

(v) education;

(b) serve on a drug- or alcohol-related coalition;

(c) have endured an alcohol-related life-changing experience; or

(d) possess experience equivalent to the criteria above, as approved by the department.

(3) In addition to the requirements in (2), an applicant must:

(a) possess a minimum of one year experience in public speaking;

(b) be a high school graduate or possess the GED equivalent;

(c) be at least 21 years of age; and

- (d) have no alcohol-related convictions within the past five years.
- (4) Upon the department's approval of an application, the applicant must attend the department's training and pass the exam with a minimum score of 90 percent to be certified as a state trainer.
- (5) A state trainer shall retain certification unless it is revoked or suspended by the department or withdrawn by the trainer. The department may revoke or suspend certification upon determining that the trainer is unsuitable.

AUTH: 16-4-1009, MCA

IMP: 16-4-1006, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule II to set out the minimum qualification requirements for individuals interested in becoming a state trainer who will instruct participants using the department's curriculum on alcohol sales and service. The proposed eligibility requirements strive to ensure that training sessions are presented clearly and effectively. The proposed rule also sets out the process an individual would undertake to become a state trainer, including attendance of a training session and passage of a department exam. Making this content available in the rule will provide potential trainers with the criteria the department uses in its approval process. The proposed rule further provides that the department may revoke or suspend a state trainer's certification if warranted.

### NEW RULE III PRIVATE TRAINING PROGRAM APPLICATION PROCESS

- (1) The department, in its sole discretion, has the authority to approve a private training provider's program.
- (2) A private training provider's program must adhere to the curriculum requirements set forth in [NEW RULE IV].
- (3) An applicant seeking to provide in-classroom training must submit:
  - (a) the curriculum, including the Montana specific training supplement;
  - (b) classroom materials used by the trainer and participants;
  - (c) instructional aids, including videos or other visual components;
  - (d) sample proof of training document; and
  - (e) the exam, its answers, and an explanation of how the combined exam score will be calculated.
- (4) An applicant seeking to provide online training must:
  - (a) make the program available to the department in its online format;
  - (b) incorporate videos, scenarios, or games into the program;
  - (c) provide a sample proof of training document; and
  - (d) submit the exam, its answers, and an explanation of how the combined exam score will be calculated.
- (5) A private training program shall retain its approval status for five years unless it is revoked or suspended by the department or withdrawn by the training provider. Upon expiration of the five-year term, the provider may apply to have its program reapproved under the application process.

AUTH: 16-4-1009, MCA

IMP: 16-4-1006, MCA

REASONABLE NECESSITY: The two types of alcohol server training programs are: (1) the state program, where state trainers instruct participants using the department's curriculum; and (2) private training programs, where private businesses instruct participants using a program developed by the business and approved by the department. The department proposes adopting New Rule III to provide private businesses with information on how to submit a program for the department's approval so that the private training provider can instruct participants using that program. Additionally, the proposed rule requires review of an approved program every five years to ensure the content remains consistent and up-to-date with the Montana Alcoholic Beverage Code.

NEW RULE IV CURRICULUM REQUIREMENTS FOR STATE AND PRIVATE TRAINING PROGRAMS (1) In addition to the requirements in 16-4-1006, MCA, the curriculum must cover the:

- (a) effects of alcohol on the body, including behavioral cues and absorption rates;
- (b) standard drink sizes and equivalency;
- (c) methods to identify underage or intoxicated persons and prevent sales thereto;
- (d) strategies used by underage persons to obtain alcohol;
- (e) acceptable forms of identification;
- (f) actions that can be taken to prevent an alcohol-related incident from occurring;
- (g) maintenance of documentation that may affect liability, including an incident log and house policies; and
- (h) techniques for denying alcohol sales.

AUTH: 16-4-1009, MCA

IMP: 16-4-1006, MCA

REASONABLE NECESSITY: The content in this proposed New Rule IV is largely relocated from ARM 42.13.904, which set forth the responsibilities of training providers. The department proposes relocating and updating this content within this rule to clarify that the curriculum requirements apply to both the state program and private training programs. The department further proposes removing all content previously set forth in ARM 42.13.904 that reiterated 16-4-1006, MCA, in favor of inserting a citation to that statute in the introductory language of this new rule.

5. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.13.902 DEPARTMENT RESPONSIBILITIES REGARDING THE ENFORCEMENT OF MANDATORY SERVER AND SALES STATE TRAINING PROGRAMS ~~(1) The implementation and enforcement of the mandatory server and sales training programs within the Responsible Alcohol Sales and Service Act in~~

Montana is under the exclusive authority and jurisdiction of the Department of Revenue. This is intended for state licenses and does not extend to tribal government and federal government issued licenses.

~~(2) The department's goal is to have effective and affordable training widely available through approved training providers in order to achieve public health and safety goals with a trained work force. Although the department cannot guarantee it will meet these goals continuously, the department will strive to accomplish them based on available resources.~~

~~(3) To comply with and implement the Act, the department will:~~

~~(1) The department shall:~~

~~(a) develop a standard curriculum to set the baseline for all training providers meeting the requirements of [NEW RULE IV];~~

~~(b) update the standard curriculum on an annual basis following each legislative session;~~

~~(c) determine delivery standards based on an objective evaluation;~~

~~(d) determine testing standards based on an objective evaluation;~~

~~(e) conduct train-the-trainer sessions for the standard curriculum or delegate such responsibility to another entity;~~

~~(f) determine trainer specifications, training policies and coordinate the trainer network for the standard curriculum; and~~

~~(g) determine specifications for training providers.~~

~~(c) conduct a full review of the curriculum every five years;~~

~~(d) issue determinations on state trainer applications within 30 days of the recruitment period closing;~~

~~(e) facilitate the training of state trainers;~~

~~(f) provide training materials;~~

~~(g) grade exams; and~~

~~(h) issue proof of training documents.~~

~~(2) A state trainer shall:~~

~~(a) provide a minimum of three hours of training utilizing the department's curriculum;~~

~~(b) adhere to the department's curriculum delivery requirements;~~

~~(c) establish the time and location of training sessions;~~

~~(d) administer an exam provided by the department;~~

~~(e) submit the attendance roster and all completed exams to the department within two weeks of a training session; and~~

~~(f) abide by all applicable laws, regulations, and policies concerning the confidentiality of participants' information.~~

~~(3) The department shall not compensate state trainers for providing training. State trainers may charge participants up to \$15 per person for each training session.~~

~~(4) The department will:~~

~~(a) approve, regulate, and monitor training providers and their curriculums;~~

~~(b) review and approve or deny a responsible alcohol sales and service training curriculum within 45 days of a complete application submittal;~~

~~(c) issue an approval or denial letter to the training provider; and~~

~~(d) provide contact information on the department web site for all approved publicly offered training providers.~~

~~(5) The department will develop an electronic tracking system for training providers to input participants' training information.~~

~~(6) Other than through the train-the-trainer program, the department will not provide responsible alcohol sales and service training programs directly to retail sales employees.~~

AUTH: 16-4-1009, MCA

IMP: ~~16-4-1001, 16-4-1002, 16-4-1003, 16-4-1004, 16-4-1005, 16-4-1006, 16-4-1007, 16-4-1008, MCA~~

REASONABLE NECESSITY: The department proposes amending ARM 42.13.902 to set forth all information regarding the state training program together in a single rule. The state training program is instructed by individuals approved by the department using the department's curriculum for alcohol sales and service. The department proposes updating and locating its responsibilities under (1) and updating and relocating the state trainer's responsibilities under (2), to make this rule covering the state trainer program easier to follow and understand. Additionally, the department is providing notice under new (3) that state trainers are not paid by the department for conducting training sessions but may charge participants.

Portions of the state trainer content proposed to be included in this rule was previously located in ARM 42.13.904, which is also proposed to be restructured in this same notice, to locate the private training program content together in one rule.

The department further proposes revising the title of the rule to better reflect the rule content as amended, and proposes striking unnecessary implementing statutes. Section 16-4-1006, MCA, of the Responsible Alcohol Sales and Service Act, specifically addresses the server and sales training program and is therefore the only implementing statute necessary for this rule.

42.13.904 PRIVATE TRAINING PROGRAMS PROVIDER RESPONSIBILITIES REGARDING THE RESPONSIBLE ALCOHOL SALES AND SERVICE ACT ~~(1) In order for a responsible alcohol sales and service training curriculum to be valid for purposes of Title 16, Ch. 4, part 10, MCA, and the rules in this subchapter, the training provider must submit its curriculum to the department for approval. All training providers shall meet the following submittal requirements for approval. In order to have their curriculum approved, a training provider must submit:~~

- ~~(a) a hard copy of the curriculum and student workbook;~~
  - ~~(b) a hard copy of the trainers' workbook or guide;~~
  - ~~(c) a hard copy of all participant handouts;~~
  - ~~(d) a hard copy of the course exam along with the answer sheet;~~
  - ~~(e) a hard copy of any training supplement specific to the state of Montana;~~
  - ~~(f) a hard copy of the program proof of completion document issued to participants; and~~
  - ~~(g) a copy of all videos or other visual aids used in the training program.~~
- (1) The department shall:

- (a) issue determinations on private training program applications within 45 days;
- (b) publish providers' contact information on the department's web site;
- (c) provide notice of new legislation impacting curriculum within 30 days of passage;
- (d) evaluate program effectiveness, including consideration of the percentage of program participants who sell to underage or intoxicated persons; and
- (e) notify the provider of any required changes based upon program deficiencies.
- ~~(2) The department strongly supports and recommends the use of an interactive discussion format for both classroom and online curriculums.~~
- ~~(3) The department supports and recommends the use of community-based expert presenters during the training, e.g., a law enforcement officer to present information regarding false identifications, a health expert to present information pertaining to how alcohol affects the body, and an attorney to present potential liability and penalty issues.~~
- ~~(4) If submitting an online program, the training provider must also make the program in its online format available for the department to review.~~
- ~~(5) The~~
- ~~(2) A private training provider must provide the contact information to be listed on the department's web site regarding the training provider including shall:~~
  - (a) company name provide a minimum of three hours of training utilizing the provider's approved curriculum;
  - (b) address;
  - (c) phone number;
  - (d) e-mail; and
  - (e) web site addresses.
  - (b) update its curriculum within 30 days of receiving notice of new legislation;
  - (c) submit updated curriculum to the department for review and only utilize updated curriculum upon receipt of departmental approval;
  - (d) establish the time and location of training sessions;
  - (e) administer an exam that includes a Montana portion provided by the department and questions based upon the curriculum content requirements set forth in [NEW RULE IV];
  - (f) grade exams;
  - (g) issue proof of training documents;
  - (h) submit training records to the department on a monthly basis in the form prescribed by the department; and
  - (i) abide by all applicable laws, regulations, and policies concerning the confidentiality of participant's personal information.
- (3) Upon determining that an approved program is ineffective or that the provider failed to adhere to any requirement in (2), the department shall notify the provider and the provider shall cease instructing the program. The provider may apply to have a new program approved under the application process.
- (4) The department shall not compensate private training providers for providing training. The providers may charge participants for the training session.

~~(6) In order for a responsible alcohol sales and service training curriculum to be approved by the department, the curriculum must provide at least three hours of instruction and meet course minimum standards to include the following content:~~

~~(a) the effects of alcohol on the human body, to include behavior cues and absorption rate factors;~~

~~(b) information on standard drink sizes and equivalency;~~

~~(c) information, including but not limited to, a review of Montana alcoholic beverage laws and criminal, civil, and administrative penalties related to 16-3-301, 16-6-304, and 27-1-710, MCA;~~

~~(d) an explanation of the three types of liability, their full consequences, and the importance of not selling or serving to underage and intoxicated persons;~~

~~(e) procedures for checking identification and the acceptable forms of identification;~~

~~(f) procedures for gathering proper documentation that may affect the licensee's liability, including maintaining an incident log, training records, licensee's policies, and conditions of employment;~~

~~(g) training for handling difficult situations, such as persons who exhibit uncooperative, disruptive, or intimidating behavior;~~

~~(h) evaluation techniques regarding intoxicated persons or others who pose a potential liability, and recommended approaches for refusing sales or service;~~

~~(i) a final test that includes questions concerning alcohol and its effect on the body and behavior, recognizing and dealing with the problem drinker, Montana liquor laws, and terminating service. The portion of the exam concerning Montana liquor laws shall consist of uniform questions approved by the department. To keep the integrity of training, the program should have different tests that are used randomly; and~~

~~(j) the participant must pass the final test with a minimum score of 80 percent.~~

~~(7) The curriculum must be delivered in a manner that accomplishes results based on an empirical objective evaluation and the department may periodically conduct a review of approved training to ensure that curriculum delivery meets the minimum standards.~~

~~(8) The department will continually strive to improve the effectiveness of both the training and the testing and will consider, among other factors, the future rate of violations by servers as a percentage who have undergone each type of training and testing. If the department determines that a particular training or testing method is less successful than others, the department may require improvements in the less successful training or testing methods, or choose to not continue certification of such training.~~

~~(9) Training providers must resubmit their curriculum to the department every two years for approval.~~

~~(10) Based on the criteria within this rule, training providers approved prior to its adoption must seek and obtain re-approval within 90 days of the rule's effective date. Training providers approved prior to the effective date of this rule may continue to provide training within the 90 days following the effective date while they are seeking the department's re-approval. Any previous approval by the department will otherwise expire 90 days following the adoption of this rule.~~



~~(11) Course exams must be graded by the training provider and not the individual trainer who instructed the course participants.~~

~~(12) Proof of training must be issued by the training provider and not the individual trainer who instructed the course participants.~~

~~(13) Within 30 days of each training session, training providers must:~~

~~(a) issue a certificate to each participant who successfully completed the training and passed the test that includes:~~

~~(i) full name;~~

~~(ii) date of birth; and~~

~~(iii) date of training.~~

~~(b) provide electronic notification to the department, in a format prescribed by the department, the following information for all participants:~~

~~(i) the training provider's name;~~

~~(ii) the date of training;~~

~~(iii) the type of training (i.e., online, classroom, or both);~~

~~(iv) the participant's full name;~~

~~(v) the participant's date of birth; and~~

~~(vi) the participants passing or failing score.~~

AUTH: 16-4-1009, MCA

IMP: ~~16-3-301, 16-4-1001, 16-4-1002, 16-4-1003, 16-4-1004, 16-4-1005, 16-4-1006, 16-4-1007, 16-4-1008, 16-6-304, 16-6-305, MCA~~

REASONABLE NECESSITY: The department proposes amending ARM 42.13.904 to set forth all information regarding private training programs together in a single rule. Private training programs are instructed by private businesses using a program that has been approved by the department. The department proposes relocating the content unrelated to private training providers to other rules as also set forth in this same notice. Additionally, the department proposes updating and locating its responsibilities under (1), and updating and relocating the private training providers' responsibilities under (2), to make the rule easier to follow and understand.

The department proposes including the language in new (3) to make the private training providers aware that the department may require a provider to cease program instruction upon the department's notification that the program is ineffective or that the provider is not meeting its obligations. Additionally, the department is providing notice under new (4) that private training providers are not paid by the department for conducting training sessions but may charge participants.

The department further proposes revising the title of the rule to better reflect the rule content as amended and striking unnecessary implementing statutes. Section 16-4-1006, MCA, of the Responsible Alcohol Sales and Service Act, specifically addresses the server and sales training program and is therefore the only implementing statute necessary for this rule.

6. The department proposes to repeal the following rule:

42.13.903 LICENSEE RESPONSIBILITIES REGARDING THE  
RESPONSIBLE ALCOHOL SALES AND SERVICE ACT

AUTH: 16-4-1009, MCA

IMP: 16-3-301, 16-4-1001, 16-4-1002, 16-4-1003, 16-4-1004, 16-4-1005, 16-4-1006, 16-4-1007, 16-4-1008, 16-6-304, 16-6-305, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.13.903 because the rule contains outdated training information and also reiterates portions of the statutory language from the Responsible Alcohol Sales and Service Act, making the rule unnecessary.

7. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail [lalogan@mt.gov](mailto:lalogan@mt.gov) and must be received no later than July 20, 2015.

8. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

9. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 7 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

10. An electronic copy of this notice is available on the department's web site at [revenue.mt.gov](http://revenue.mt.gov). Open the drop down list under the "Other Useful Resources" tab located at the top of the homepage and select "Administrative Rules." Proposal notices are located under the "Hearing Information" section within. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of SB 29, 2011, Senator Lynda Moss, was notified by regular mail on July 9, 2013, and subsequently notified on May 8, 2015.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Laurie Logan  
Laurie Logan  
Rule Reviewer

/s/ Mike Kadas  
Mike Kadas  
Director of Revenue

Certified to the Secretary of State June 1, 2015.